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6 **IN THE UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 STEVEN FERGUSON,
10 Plaintiff,

2:05-CV-103-BES-PAL

11 vs.
12 SOUTHERN HIGHLANDS GOLF CLUB,
13 LLC SOUTHERN
14 HIGHLANDS/CHRISTOPHER HOMES,
15 LLC, Nevada Limited Liability
16 Companies; CHRISTOPHER
17 COMMUNITIES AT SOUTHER
18 HIGHLANDS GOLF CLUB
19 COMMUNITY ASSOCIATION;
20 SOUTHERN HIGHLANDS
21 COMMUNITY ASSOCIATION; GARRY
22 GOETT, an individual; CHRISTOPHER
23 STUHMER, an individual; and JAY
24 BECKMAN, an individual,
25
26 Defendants.

ORDER

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28 Before the Court is Defendants Southern Highlands Golf Club, LLC, Garry Goett,
29 and Jay Beckman's Motion to Dissolve Preliminary Injunction (#146) ("Motion to Dissolve")
30 filed on April 20, 2006. Plaintiff Ferguson filed his Opposition to Defendants Motion to
31 Dissolve Preliminary Injunction and Motion for Sanctions Pursuant to FRCP Rule 11 (#151)
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1 ("Opposition") on May 9, 2006. Defendants filed their Reply in Support of Motion to
 2 Dissolve Preliminary Injunction (#156) ("Reply") on May 22, 2006. Defendants filed their
 3 Opposition to Motion for Sanctions (#158) ("Opposition to Sanctions") on May 22, 2006.
 4 Plaintiff filed his Reply to Defendants Motion to Dissolve Preliminary Injunction and Motion
 5 for Sanctions (#166) ("Reply in Support of Sanctions") on June 6, 2006.

6 I. BACKGROUND

7 This case arises out of allegations of discrimination in connection with Plaintiff's
 8 residence in the planned development community of Southern Highlands ("Southern
 9 Highlands"). In December 2001, Plaintiff purchased a home in Southern Highlands along
 10 with a membership in the Southern Highlands Golf Club ("the club"). (Compl. (#1) ¶ 12.)
 11 After several months of living in Southern Highlands, Plaintiff was allegedly approached
 12 by a member of the club who asked if he could call Plaintiff by a racially insensitive
 13 moniker. (Mot. Prelim. Inj. (#3) 5.) Plaintiff claims that he alerted the club's management
 14 to the comment and that he was assured something would be done. Id.

15 Plaintiff asserts that following his report of the comment, however, he became the
 16 target of further harassment. Id. Plaintiff claims that a picture of a hanging African-
 17 American was posted to his door along with a note containing racial epithets. Id. He also
 18 claims that his club membership was revoked for no reason and that his membership
 19 deposit was improperly withheld. (Compl. (#1) ¶ 24.) He further claims that he was denied
 20 services in the golf club, that he was referred to in a racially derogatory manner, and that
 21 he was ostracized by club members at the bidding of the Defendant Goett. Id.

22 Plaintiff filed his Complaint on February 1, 2005, alleging, among other things,
 23 violations of the Fair Housing Act ("FHA"). (Compl. (#1) ¶ 31.) On February 4, 2005,
 24 Plaintiff filed his Motion for Temporary Restraining Order and Preliminary Injunction (#3)
 25 ("Motion for Preliminary Injunction") seeking to prohibit Defendants from interfering with his
 26 use of his club membership. (Mot. Prelim. Inj. (#3) 2.) On July 8, 2005, Plaintiff's Motion

1 for Preliminary Injunction was granted. (See Order (#57).) Defendants now seek to have
2 that injunction dissolved.

3 **II. ANALYSIS**

4 **A. Preliminary Injunction**

5 “A party seeking modification or dissolution of an injunction bears the burden of
6 establishing that a significant change in facts or law warrants revision or dissolution of the
7 injunction.” Sharp v. Weston, 233 F.3d 1166, 1170 (9th Cir. 2000) (citing Bellevue Manor
8 Assocs. v. United States, 165 F.3d 1249, 1255 (9th Cir. 1999)). The preliminary injunction
9 in question here was established by the court’s Order (#57) of July 12, 2005.¹ As a
10 consequence, this Court’s judgment as to whether Defendants have established a
11 significant change in facts warranting dissolution of the injunction will be made in relation
12 to the factual findings set out in the July 12th order.

13 At that time, the court found that Plaintiff resided in a home in Southern Highlands
14 and owned a membership in the golf club associated with the community. The court also
15 found that acceptance into the club had been a condition precedent to Plaintiff’s purchase
16 of the home and that the membership was thus part of the “bundle of rights” conveyed at
17 the time of sale. (Order (#57) 2.) The court then concluded that in so much as the
18 membership was “part and parcel” of Plaintiff’s interest in real property, no adequate
19 remedy existed at law. Id. Implicit in the court’s ruling was the judgment that Plaintiff’s
20 allegation that his reporting of racially hostile remarks resulted in retaliation against him
21 was sufficient to suggest a likelihood of success on the merits of his Fair Housing Act
22 claims. See id.

23 Defendants argue that Plaintiff’s claim for injunctive relief is moot because he no
24 longer lives in Southern Highlands. They maintain that since Plaintiff no longer lives in

25
26 ¹At that time, this case was assigned to the Honorable Judge James C. Mahan, United States District Court Judge, District of Nevada.

1 Southern Highlands, he cannot claim that he is entitled to membership in the club as a
2 benefit of residency, and therefore the injunction should be dissolved. (Mot. Dismiss
3 (#146) 10.)

4 Plaintiff argues that Defendants are estopped from arguing for the dissolution of the
5 injunction under the “law of the case” doctrine. He claims that Defendants have
6 unsuccessfully argued for the dissolution of the injunction before and thus should not be
7 able to do so here. (Opposition (#151) 4-6.) He also claims that even if they should be
8 allowed to present the issue now, his place of residency is irrelevant as it relates to the
9 validity of the injunction. Id. at 7-8.

The FHA prohibits discrimination in the benefits of residency. 42 U.S.C. § 3604(b). In seeking the injunction in question, Plaintiff argued that his club membership should be characterized as a benefit of his residency in Southern Highlands thus triggering the protections of the FHA. (Motion Prelim. Inj. (#3) 3 & 7.) The court agreed. (See Order (#57).) The finding was crucial because the FHA provides no protection against discrimination in private club memberships as independent entitlements. See 42 U.S.C. § 3604. Thus, in granting the injunctive relief the court was preserving Plaintiff's ability to enjoy the use of his membership in connection with his residency.

18 Today, however, Plaintiff resides in Southern California, not Southern Highlands²;
19 thus, any interference with Plaintiff's membership cannot constitute a denial of a benefit
20 associated with his Southern Highlands residency. As such, the factual underpinning of
21 the injunction no longer exists, and the court's rational for entering the injunction is no
22 longer applicable. More importantly, Plaintiff is no longer in a position to reap the benefits

24 ²The Court bases this finding on the fact that on January 17, 2006, Plaintiff admitted in
25 open court that he currently resides in Beverly Hills, California. (Minutes (#115).) Defendant
26 does not now dispute that he no longer resides in Southern Highlands. (See Opposition (#151).)
It should also be noted that Plaintiff's pleadings refer to a Beverly Hills post office box as his
point of contact.

1 of the injunction. It should therefore be dissolved.

2 Plaintiff's arguments against dissolution are unfounded. Plaintiff claims that the
3 cases Defendants cite in support of their argument are inapposite, and that the injunction
4 is valid regardless of his place of residency. (Opposition (#151) 7.)

5 Defendants cite United States v. Rock Springs Vista Development, 8 Fed.Appx. 837
6 (9th Cir. 2001) and Harris v. Itzhaki, 183 F.3d 1043 (9th Cir. 1999) in support of dissolution
7 of the injunction in question. Defendant's citation of Rock Springs, however, is misplaced
8 because it is an unpublished disposition and therefore has no precedential value. See
9 CTA9 36-3. Harris, on the other hand, is published. There, the Ninth Circuit held that the
10 plaintiff's request for prospective injunctive relief against an apartment complex that had
11 discriminated against her became moot when she voluntarily moved out of the apartment.

12 Harris and this case are similar in that in both cases the benefit of the injunction was
13 contingent on some prerequisite the absence of which made the relief sought obsolete—in
14 Harris it was that the plaintiff be living in the apartment complex; here, it was that Plaintiff
15 reside in Southern Highlands. Thus, in both cases the plaintiffs were no longer in a
16 position to benefit from the relief sought once they moved.

17 Defendants are also not barred from seeking dissolution of the injunction by the "law
18 of the case" doctrine. Preliminary injunctions do not represent the "law of the case."
19 Southern Oregon Barter Fair v. Jackson County, Oregon, 372 F.3d 1128, 1136 (9th Cir.
20 2004) (citations omitted). Beyond that, Defendants previous attempts to dissolve the
21 injunction have not touched on the issue of Plaintiff's change of residence, (Opposition to
22 Sanctions (#151) 8), the critical issue here.

23 Therefore, the Court having determined that the factual basis of the injunction is no
24 longer valid and that Plaintiff is no longer in a position to benefit from the injunction, and
25 seeing no equitable reason for refusing to dissolve the injunction, grants Defendants
26 Motion to Dissolve.

1 **B. Sanctions**

2 Plaintiff asserts that Rule 11 sanctions are appropriate because Defendants' Motion
3 is brought without support, because previous efforts to dissolve the injunction have been
4 denied, and because Defendants' efforts represent an attempt to " 'paper' Plaintiff in Pro
5 Se to death." (Opposition (#151) 8.)

6 Defendants' Motion, though, is supported by the general rule that dissolution of an
7 injunction is appropriate where a change in factual circumstances warrants it. Additionally,
8 that previous efforts have been denied does not change the fact that Defendants now
9 assert a different theory of dissolution, one that was not raised previously. (Opposition to
10 Sanctions (#158) 3.) Finally, there is no indication that Defendants' Motion is an effort to
11 take advantage of Plaintiff's pro se status. Thus, Plaintiff's Motion for Sanctions is denied.

12 **III. CONCLUSION**

13 For the foregoing reasons, Defendants' Motion to Dissolve (#146) is GRANTED.

14 IT IS FURTHER ORDERED that Plaintiff's Motion for Sanctions (#151) is DENIED.

15 IT IS SO ORDERED.

16 DATED this 19th day of March, 2007.

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19 United States District Judge

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